

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: PCS/SB 1866 (156128)  
 INTRODUCER: Finance and Tax Committee  
 SUBJECT: Taxation  
 DATE: April 9, 2010

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	ODonnell	McKee	FT	<b>Pre-meeting</b>
2.			GA	
3.			WPSC	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Proposed Committee Substitute (PCS) authorizes certain Community Development Districts (CDDs) to levy a tax of up to one percent on the consideration paid on commercial rental transactions occurring in the district. The levy requires approval by 4 out of 5 of the elected board members of the CDD and the approval of at least two-thirds of the landowners within the CDD.

This PCS adds a new section to Chapter 212, Florida Statutes.

The PCS has not been reviewed by the Revenue Estimating Conference. It is expected to have an indeterminate and/or insignificant impact on state revenue collections.

**II. Present Situation:**

CDDs are local units of special-purpose government created pursuant to Chapter 190, F.S. They are authorized to exercise the limited and specialized functions described in that chapter, through a board of supervisors, for the purpose of facilitating the delivery of urban community

development services in concert with private developers. Among the powers granted to CDDs are the power to raise money by way of user fees and charges, to impose special assessments, to issue bonds and to levy such tax and special assessments as may be authorized.<sup>1</sup>

There are currently 576 CDDs in the state.<sup>2</sup> CDDs may be exclusively comprised of land used only for commercial purposes, and some districts have no qualified electors, meaning that no person registered to vote resides in that district. In these situations, a CDD's Board of Supervisors is elected by the district's landowners.

Currently, CDDs are not authorized to impose sales tax on a transaction subject to tax pursuant to section 212.031, Florida Statutes. That section provides that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property. Tax is levied on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee.<sup>3</sup> The rent or fee includes payments for granting a privilege to use or occupy real property for any purpose. Certain specified exemptions from the tax apply.

The Department is authorized to adopt rules to interpret section 212.031, Florida Statutes, acting pursuant to the Chapter 120, Florida Statutes, the Administrative Procedures Act. Chapter 212, Florida Statutes, provides for administration of the tax on sales, use and other transactions.

### **III. Effect of Proposed Changes:**

The PCS authorizes any CDD without qualified electors to levy a tax of up to one percent on all transactions occurring in the district that are subject to sales tax under s. 212.031, F.S. If imposed, the tax would be in addition to the tax imposed by 212.031, F.S.

Approval to levy the tax requires an affirmative vote from 4 out of 5 of the elected members of the board of supervisors of the CDD. The PCS also requires approval by at least two-thirds of the landowners within the CDD.

The PCS provides that the proceeds of the tax may only be used to promote and support commercial activity within the district, including festivals, special events, and other such activities within the district and to provide public services associated with such activities. The Board must give prior approval to all expenditures of the proceeds of the tax.

The PCB requires that the tax be locally administered. The Board is required to adopt a resolution including provisions for:

- Initial collection of the tax to be made in the same manner as the tax imposed under Chapter 212 (Sales and Use Tax).
- Designation of the district official to whom the tax shall be remitted, and a description of that official's powers and duties.

---

<sup>1</sup> Section 190.011, F.S.

<sup>2</sup> Department of Community Affairs, [http://www.floridaspecialdistricts.org/OfficialList/funcnt\\_sa.cfm](http://www.floridaspecialdistricts.org/OfficialList/funcnt_sa.cfm) (visited 3/22/10; noted as being temporarily unavailable on 3/25/10).

<sup>3</sup> Sec. 212.031(1)(c), F.S.

- Requirements for keeping appropriate books, records, and accounts by those responsible for collecting and administering the tax.
- Provision for a dealer credit.
- Retention of an amount by the district for costs of administration, not to exceed 3 percent of collections.

The district assumes all responsibility for auditing, assessing, collecting and enforcing the payment of tax. In doing so, it may use any power granted to the Department of Revenue by Chapter 212, Florida Statutes, to determine the amount of tax due and to enforce payment. The district is bound by Department rules pertaining to the state tax as applied to the rental of real property. Confidentiality requirements are imposed and also apply to certified public accountants who may be hired to administer tax imposed by a CDD board. The tax imposed by the CDD is a lien on the property of the lessee or licensee of real property.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The issue has not been considered by the Revenue Estimating Conference. There is a high probability that it would be estimated to have an indeterminate and/or insignificant impact on state revenue collections owing to the inability to predict which, if any, CDD will exercise the taxing authority and the small number of potential districts involved.

B. Private Sector Impact:

If the authority to impose the tax is exercised by a CDD, it may be assumed that any expenditures could have an overall beneficial impact on economic activity in the CDD.

C. Government Sector Impact:

**VI. Technical Deficiencies:**

The PCS authorizes imposition of a tax that could be determined to be part of the “sales price” paid for a commercial rental, with the sales price amount being subject to the state imposed tax on commercial rentals by s. 212.031, F.S. The PCS refers to the collection of tax from the “customer.” It is unclear what the reference to means. It appears the reference should be to licensee. The provisions regarding the board resolution are unclear. The administrative authority provided to the CDD is limited to provision within ch. 212, F.S. There are provisions in ch. 213, F.S., that the Department relies on to administer s. 212.031, F.S. The bill provides that the CDD is bound by the rules of the Department related specifically to s. 212.031, F.S. It is unclear whether that a CDD is otherwise authorized to adopt administrative rules necessary to audit, assess, collect and enforce the payment of the authorized tax.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**PCS (156128) by Finance and Tax:**

The Proposed Committee Substitute (PCS) authorizes certain Community Development Districts (CDDs) to levy a tax of up to one percent on the consideration paid on commercial rental transactions occurring in the district. The levy requires approval by 4 out of 5 of the elected board members of the CDD and the approval of at least two-thirds of the landowners within the CDD. The Districts are assigned responsibility for administering the tax.

- B. **Amendments:**

None.